



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170919912-8358-02]**

**RIN 0648-BH26**

**Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 12**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS is modifying the commercial scup quota periods, as recommended by the Mid-Atlantic Fishery Management Council. This action moves the month of October from the Summer Period to the Winter II Period. This rule is intended to increase fishing opportunities by extending the Winter II Period when possession limits are higher.

**DATES:** Effective *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of the Scup Commercial Quota Period Modification Framework, including the environmental assessment (EA), are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at [http://www.mafmc.org/s/Scup\\_quota\\_period\\_FW\\_EA\\_resubmission2\\_Feb2018.pdf](http://www.mafmc.org/s/Scup_quota_period_FW_EA_resubmission2_Feb2018.pdf).

**FOR FURTHER INFORMATION CONTACT:** Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

**General Background**

Scup (*Stenotomus chrysops*) is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission through the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan (FMP). The management unit for scup is U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The scup stock is not overfished and it is not experiencing overfishing.

Currently, the scup commercial quota is broken into three periods: Winter I (January 1 through April 30) receives 45.11 percent of the annual quota; Summer (May 1 through October 31) receives 38.95 percent; and Winter II (November 1 through December 31) receives an initial 15.94 percent with any unused Winter I quota rolled over into Winter II. Federal trip limits are imposed during the two Winter Periods; individual states impose landing restrictions during the Summer Period. The Council established these quota periods in 1997 to recognize that there are two commercial fishing fleets (62 FR 27978; May 22, 1997). Larger vessels harvest scup offshore during the winter months, and smaller vessels harvest scup inshore during the summer. Without the quota periods and Federal trip limits, the larger vessels would be able to fish the full annual quota early in the year, leaving no quota for the smaller inshore fleet.

The scup stock was declared rebuilt in 2009 based on the findings of a stock assessment. The commercial scup quota nearly doubled between 2010 and 2011. From 2011 to 2016, commercial scup landings have been 20 to 47 percent below the annual commercial quota. Stakeholders have stated that the more restrictive state-imposed possession limits during the Summer Period, compared to the Winter I and II Periods, have prevented fishermen from landing high volumes of scup when they are available. This limits the ability of the fishery to achieve the annual commercial quota and results in forgone yield.

## Final Action

To address these limits on the ability of the fishery to achieve the annual commercial quota, this action moves the month of October from the Summer Period to the Winter II Period (Table 1). This action allows more landings at higher possession limits during longer periods of time. This change is effective for 2018 and is expected to have positive socioeconomic impacts compared to maintaining the status quo quota periods. This action does not change the possession limits or the amount of quota allocated annually to each period.

**Table 1. Revised Commercial Quota Period Dates. Percent Shares and Possession Limits Remain Unchanged**

Quota Period	Percent Share	Dates	Federal Possession Limits (Per Trip)	
			lb	kg
Winter I	45.11	January 1 – April 30	50,000	22,680
Summer	38.95	May 1 – September 30	N/A	N/A
Winter II	15.94	October 1 – December 31	12,000 (initial)	5,443
Total	100.0	N/A	N/A	N/A

## Comments and Responses

On February 26, 2018, NMFS published the proposed rule (83 FR 8236) for this action for public notice and comment. NMFS received two relevant comments on the proposed rule. Both offered support of this modification. One suggested that we also consider including the month of May in the Winter I Period. The Council did consider moving the first two weeks of May to the Winter I period but ultimately voted not to include it. No public support for this option was offered when the Council took final action. The other commenter mentioned the Council should adjust the quota allocated to each period. This was beyond the scope of this action, but it could be considered in a future amendment, should the Council desire to revise the

quota period allocations. No changes are made to this action based on these comments.

### **Changes from the Proposed Rule**

NMFS is correcting the title of this action to be Framework Adjustment 12, rather than Framework Adjustment 10.

### **Classification**

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none has been prepared.

## List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: April 16, 2018.

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Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

### **PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.122, paragraph (c)(1) is revised to read as follows:

#### **§ 648.122 Scup specifications.**

\* \* \* \* \*

(c) \* \* \*

(1) The annual commercial quota will be allocated into three periods, based on the following percentages:

Period	Percent
Winter I—January-April	45.11
Summer—May-September	38.95

Winter II—October-December	15.94
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\* \* \* \* \*

3. In § 648.123, paragraph (a)(2)(ii) is revised to read as follows:

**§ 648.123 Scup accountability measures.**

(a) \* \* \*

(2) \* \* \*

(ii) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30 and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish notification in the *Federal Register* announcing the restoration.

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4. In § 648.125, paragraphs (a)(1) and (a)(5) are revised to read as follows:

**§ 648.125 Scup gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess more than 1,000 lb (454 kg) of scup from October 1 through April 30, or more than 200 lb (91 kg) of scup from May 1 through September 30, unless fishing

with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, and all other nets are stowed and not available for immediate use as defined in § 648.2.

\* \* \* \* \*

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 1,000 lb (454 kg) or more of scup from October 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through September 30, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.126, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed and not available for immediate use as defined in § 648.2, and that can be shown not to have been in recent use, is considered to be not available for immediate use.

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